

TO

Bob Pipinich
DA Zulmaga Construction
652 SW 143rd
Seattle, WA 98166

FROM

FFREY W. WINTER, P.E.
Airport Engineer
King County International Airport
P. O. Box 80245
Seattle, WA 98108
(206) 296-7380 • Fax (206) 296-0190

SUBJECT

Rule 171 Question

FOLD HERE

DATE

1-6-98

I sent a copy of your letter dated Nov 7 regarding Rule 171 to our Prosecutor's Office to advise me on what the law says. Marc Davies response was basically that we do ask the contractor interpret the scope of this project work in light of Rule 171 and to put down what portion at all of the contract is exempt from the added sales tax. We are not in a position to tell you what to do about the use tax on permanent materials.

41 of the 7 bidders also claimed the full contract amount as falling under Rule 171. As it stands we will not be adding 3.6% sales tax to the contract payments

Enclosed is a copy of the WAC 45B-20-171

SIGNED

Jeff Winter

SPEED-MEMO

WAC 458-20-171, Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

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*54727 Wash. Admin. Code s 458-20-171

**WASHINGTON
ADMINISTRATIVE CODE
TITLE 458. REVENUE,
DEPARTMENT OF
CHAPTER 458-20. EXCISE TAX
RULES**

Current through April 23, 1997

458-20-171. Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection

with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the

WAC 458-20-171, Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

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disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

***54728** The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

(a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or

(b) Placed on the street, road, or highway by the county or city itself using its own employees, or

(c) Sold by the county or city at actual cost to another county or city for road use.

Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

***54729 Use Tax**

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or

WAC 458-20-171, Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

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highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road

purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

Order ET 71-1, § 458-20-171, filed 7/22/71; Order ET 70-3, § 458-20-171 (Rule 171), filed 5/29/70, effective 7/1/70.

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
CIVIL DIVISION
TRANSPORTATION AND ADMINISTRATIVE SERVICES

Norm Maleng
Prosecuting Attorney

3900 Key Tower
700 Fifth Avenue
Seattle, Washington 98104
(206) 296-0430
SCAN 667-0430
FAX (206) 296-0420

Facsimile Cover Sheet

DATE: January 6, 1998

TO:

| | | | |
|----------|----------------|----------|--------|
| NAME: | Jeffrey Winter | PHONE #: | 6-7380 |
| COMPANY: | KCIA | FAX #: | 6-0190 |

FROM:

| | | | |
|-------|-------------|----------|----------------|
| NAME: | Marc Davies | PHONE #: | (206) 296-0439 |
| | Paralegal | FAX #: | (206) 296-0420 |

MESSAGE:

| |
|--|
| Attached is WAC 458-20-171 (Rule 171). |
|--|

4 NUMBER OF PAGES (Including Cover Page)

CALL (206) 296-0439 to report any problems receiving transmission.

TO Sally Tenney
PAO

MS GAT-39

FROM

FFREY W. WINTER, P.E.
Airport Engineer
King County International Airport
P. O. Box 80245
Seattle, WA 98108
(206) 296-7380 • Fax (206) 296-0190

SUBJECT

Rule 171 Sales Tax

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DATE

12-30-97

D. A. Zuluaga Construction has raised a question regarding Rule 171. See attached copy of his letter and a copy of his bid. In past discussions with Mary Yu and others, the County has decided in the past to let the contractor make the choice on what Rule 171 covers. I personally think this particular project was not exempt from sales tax but other bidders thought it was exempt.

Please give me some guidance as to how to respond to his question

cc Mary Yu PAO

SIGNED

FW Winter

FORM 1120S, RAPIDFORMS, INC. TO REORDER CALL 800-257-8354; FAX 800-451-8113

C0296

SPEED-MEMO

KCSlip4 52852

SEA419212

D.A. ZULUAGA CONSTRUCTION, INC.

November 7, 1997

96-316-015

King County International Airport
PO Box 80245
Seattle, Washington 98108

Attn: Mr. Jeffrey Winter, P.E.

Re: Contract No. C63179C – Oil Separator Work
Sales Tax

Dear Jeff:

There seems to be a misunderstanding of sales tax liability for this project on King County's part.

When we prepared and submitted our bid for the above project, sales tax for permanent materials was not included in any of our unit bid prices. Not including tax in the bid items was based on Paragraph G - Sales Tax on page 5 of the bid form. The last sentence states, "King County will pay the Washington States Sales Tax only on the total contract price." When the Owner pays tax on the entire contract price, the contractor does not pay sales tax on permanent materials.

Paragraph B - Rule 171 on Page 4 of the bid form contains ambiguous language regarding its application to this contract. Under Rule 171 Amount, we believed the amount to be written in by the contractor was the amount of the bid that was to be exempt to payment of taxes on permanent materials by the contractor. That is why we wrote in the entire contract amount which is in agreement with Paragraph G.

Paragraph B - Rule 171 made no sense because it is impossible for a contractor to determine an Owner's tax liability on a project of this nature. It is industry standard for the Owner to specifically spell out tax responsibilities as they did in Paragraph G.

Please let me know if you need further information.

Sincerely,



Robert J. Pipinich
Project Manager

652 S.W. 143rd Seattle, WA 98166 (206) 242-1240

KCSlip4 52853

SEA419213

RECEIVED

NOV 10 1997

KING COUNTY
INTERNATIONAL AIRPORT



King County
International Airport
Department of
Construction & Facilities Management
P.O. Box 80245
Seattle, WA 98108
(206) 296-7380
(206) 296-0100 TDD
(206) 296-0190 FAX

RECOMMENDATION OF AWARD

October 14, 1996

TO: Mel Dodd, Manager, Professional and Construction Services Procurement Division
ATTN: Joanne Jones, Supervisor

FM: Jeffrey W. Winter, Airport Engineer, King County International Airport *J Winter*

RE: Oil Separators, Bid Number C63179C

The following bids were received for this project:

| | Base Bid | Base Bid With Tax |
|--|--------------|-------------------|
| 1 Pape & Sons Construction, Inc. | \$118,890.00 | \$118,890.00 * |
| 2 D.A. Zuluaga Construction Co. | \$174,500.00 | \$174,500.00 * |
| 3 DDI Construction Co. | \$202,765.00 | \$219,391.73 |
| 4 Orca Pacific Construction, Inc. | \$221,375.00 | \$221,375.00 * |
| 5 Severson Construction | \$226,500.00 | \$245,073.00 |
| 6 Glacier Construction & Equipment Co., Inc. | \$234,950.00 | \$254,215.90 |
| 7 Diamaco, Inc. | \$285,000.00 | \$285,000.00 * |

* These bidders deemed the work to be exempt from state sales tax under Rule 171.

In as much as the apparent low bidder, Pape and Sons Construction, Inc., has withdrawn his bid, the next apparent low responsive bidder is D.A. Zuluaga Construction, Inc. This office recommends that the contract be awarded to them for the amount below:

| | |
|----------------|--------------|
| Base Bid | \$174,500.00 |
| 8.2% Sales Tax | <u>0</u> |
| | \$174,500.00 |

Approved:

Cynthia Stewart
Cynthia Stewart, Airport Manager

Date 10/14/96

Funds Available:

Ruth Hultengren
Ruth Hultengren, Administrative Services Officer

Date 10/15/96

Attachments: Record of Contract



KCSlip4 52854

SEA419214

B. RULE 171

Under WAC 458-20-171 ("Rule 171"), retail sales tax does not apply to any portion of the contract price charged for building, repairing or improving a publicly owned street, road, path, bridge, etc. (see WAC 458-20-171 for detailed explanation). In submitting a bid amount for Rule 171 work, the undersigned warrants that at least the submitted amount will qualify for this sales tax exemption and that the undersigned will assume the tax liability for any amounts disallowed by the State of Washington. The amount submitted for Rule 171 will be used in calculating the total cost to King County of the bid submitted, and in determining the lowest bid.

RULE 171 AMOUNT

Total of items in Base Proposal which qualify under Rule 171.

One Hundred Seventy Four Thousand Nine Hundred \$ *174,500.00*

C. SUBCONTRACTING/WITH MWB FIRMS

Bidder shall complete and include with their bid the attached Contractors Declaration of Minority/Women's Business Participation Form.

D. BIDDER SUBCONTRACTOR IDENTIFICATION

All bidders shall identify by checking the appropriate item below for the type of contractor and subcontractor/supplier relationships which are proposed for this contract.

- ☐ 1. Bidder is a minority and/or a woman's business (MWB) which will perform the entire contract unassisted or a MWB that will exclusively use certified MWBs as subcontractors or suppliers.
- ☒ 2. Bidder is a MWB which alone or as part of a joint venture, serves as the prime contractor where prime contractor MWB participation is at least 25% of the dollar value of the contract.
- ☐ 3. Bidder is a non-MWB which uses M/WBs as subcontractors or suppliers in an amount equal to 25% or more of the contract amount.
- ☐ 4. Bidder is a non-MWB which will not use MWB subcontractors or suppliers to the extent set forth in three (3) above.

The lowest responsive bid proposing participation by minority or woman owned firms which is within five percent (5%) of any low bid with no MWB utilization or a lower ranking bid, shall be awarded the Contract according to the ranking set forth in King County Code Chapter 4.18.